

## **Summary of Changes Made by the 2004 Modifications to the Super ESPC IDIQs**

*Please note:*

*Changes are shown in Arial italic.*

*“No significant changes” or “no substantive changes” means that there may have been changes in capitalization, punctuation, wording, and organization, but that I found no significant changes in meaning and no significant additions or deletions. — E. Atkin*

### **PART I — THE SCHEDULE**

#### **SECTION B — SUPPLIES OR SERVICES AND PRICES/COSTS**

##### **B.4 FAR 52.216-18 (MODIFIED) ORDERING (OCT 1995)**

*Changes the termination date of the Super ESPCs to Sept. 30, 2006.*

#### **SECTION C – DESCRIPTION/SPECIFICATIONS/WORK STATEMENT**

##### **C.1 GENERAL REQUIREMENTS/PROJECT SCOPE**

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*Deleted from the new C.1 was provision on revision of the IDIQ through the Delivery Order (DO) RFP and the text, “In the event of a conflict between the DO RFP and the IDIQ, the provisions of the DO RFP will prevail.” The provision addressing revising the IDIQ through the DO RFP is covered in H.19, which specifies that:*

*“Should there be a conflict between the terms and condition provisions in the Delivery Order and the IDIQ Contract, the Contractor shall notify the Agency Contracting Officer for resolution.”*

##### **C.2 ENERGY CONSERVATION MEASURES (ECMs)**

##### **C.2.1 Types of Energy Conservation Measures (See Attachment 3 – Table B-1 for ESCO markup submittal for 2 new technology categories)**

*Added 2 technology categories: commissioning and miscellaneous.*

##### **C.2.3 Contract Requirements for ECMs**

*C.2.3 (a) specifically incorporates submittal of Design and Construction Package(s) and Commissioning Plan for installed ECMs;*

*C.2.3 (b) is new and says that any modifications of ECMs during the contract term must be approved by the Agency CO and paid for by the contractor.*

#### **C.4.2 M&V Submittals During Delivery Order Development and Post Award**

*Contains new references to requirement to use M&V plan and report outlines in Attachment 7. Clarifies required M&V submittals and adds text for Post-Installation report submittal::*

“The approval by the Government of this Post-Installation Report shall constitute Government Acceptance of the Contractor’s energy savings performance guarantee.”.

#### **C.5.4 Installed ECM Commissioning**

*Adds more specific Commissioning requirements; requires inclusion of ECM Commissioning approach in final proposal, Commissioning Plan after approval of Design and Construction Package, and Commissioning Report after ECM installation.. Reference to Building Commissioning Guide 2.1 is deleted. Adds for Commissioning Report:*

“ The approval of this ECM Commissioning Report by the Government shall constitute Acceptance of the Contractor’s achievement of facility performance requirements.”

#### **C.6 OPERATION OF ECMs**

*Clarifies that Contractor is responsible for operation of ECMs unless the Government assumes this responsibility through determination of the Agency CO. Other specific exceptions were deleted.*

*New clarification in C.6.3:*

“If the Government fails to operate an ECM pursuant to the Contractor-provided work procedures, the Government will compensate the Contractor for losses directly attributable to that action.”

*New requirements in C.6.4 for Contractor to maintain and provide operations records for annual M&V reviews.*

*C.6.5 is deleted. (“The Government will not move, turn off, or otherwise change any Contractor-owned equipment...”)*

#### **C.7 PREVENTIVE MAINTENANCE OF ECMs**

*Clarifies that Contractor is responsible for preventive maintenance unless the Government assumes this responsibility (in writing by Agency CO). Other specific exceptions were deleted.*

*New C.7.2 Requires Contractor prepare preventive maintenance procedures for all installed ECMs.*

*New clarification in C.6.3:*

“If the Government fails to perform preventive maintenance per Contractor-provided preventive maintenance procedures and checklists, and the performance of the Installed ECMs is adversely affected, (including manufacturer equipment warranties) the Government will compensate the Contractor for the losses directly attributable to that action.”

*C.7.5 is deleted. (“The Government will not move, turn off, or otherwise change any Contractor-owned equipment...”)*

## **C.8 REPAIR OF ECMs**

*C.8.4 is new. Allows for escrow accounts to be established to accumulate funds for repair & replacement.*

## **C.12 UTILITY OR SYSTEM BENEFIT FUND ENERGY EFFICIENCY/RENEWABLE PROJECT FINANCIAL INCENTIVES**

*Clarifies the responsibility of the Contractor to not only determine the source, value, and availability of financial incentives, but also to coordinate with the Agency CO to prepare the required documentation and to effectively apply such incentives to the project.*

## **SECTION E – INSPECTION AND ACCEPTANCE**

*New E.2 clarifies the definition of Acceptance as follows. Note that by this definition, approval of the post-installation report is required before acceptance.*

### **E.2 ACCEPTANCE**

- E.2.1** Execution by the Agency Contracting Officer of a Delivery Order under this Contract constitutes acceptance of the Final Proposal as offered by the Contractor.
- E.2.2** Government Acceptance, for purpose of payment under Section G.3 occurs when the following approvals are completed: approval by the Agency Contracting Officer of the Contractors Post-Installation Report (**Section C.4.2(c)**) and the approval by the Agency Contracting Officer of Contractor’s ECM Commissioning Report (**Section C.5.4.3**), and the project inspection and acceptance is obtained pursuant to **Section E.4**.

## **SECTION F — DELIVERIES OR PERFORMANCE**

### **F.1.1 Contract Term**

*Extends the ordering period to September 30, 2006.*

## **SECTION G - CONTRACT ADMINISTRATION DATA**

### **G.1 CONTRACT ADMINISTRATION FOR THE GOVERNMENT**

*Updates DOE CO contact information.*

*Deletes details on correspondence and administration of the delivery order (to be included in the DO RFP by Agency CO)*

### **G.3 INVOICE SUBMITTALS FOR DELIVERY ORDER PROJECTS**

*Old G.3 (b) specified monthly payments. New G.3 (b) leaves frequency of payments to be negotiated and specified in the delivery order. (Recommend frequency of payments be negotiated and noted in Schedule DO-1 Final)*

*New G.3 (a) does not specify the 30-day test period before payments may begin; instead, requires that*

“Payments will commence when all ECMs have been installed and Acceptance by the Government is obtained as required under Section E.”

*Note that the 30-day test period is not mentioned or defined in G.3 (a) anymore. The only other mention of it I found in the contract was in E4:*

“The Agency Contracting Officer will accept the project installation in writing, in accordance with Section G.3.(a). upon satisfactory completion of the required 30-day test period, and upon receipt of all other required deliverables.”

### **G.4 PAYMENT TO THE GOVERNMENT FOR ANNUAL GUARANTEED SAVINGS SHORTFALL**

*Simplifies the verbiage on payments for shortfalls:*

- (a) If the Contractor fails to meet the annual performance requirement as verified by the Measurement and Verification documents, the Government shall adjust the payment schedule to recover the Government’s overpayments in the previous year and to reflect the lower performance level into the current year.
- (b) When the ECM performance level is restored, the Government will adjust the Contractor payment schedule accordingly.

**SECTION H - SPECIAL CONTRACT REQUIREMENTS**

**H.1 CONFIDENTIALITY OF INFORMATION (APR 1984)**

*This paragraph deleted:*

- (d) The contractor agrees that upon request by DOE it will execute a DOE-approved agreement with any party whose facilities or proprietary data it is given access to or is furnished, restricting use and disclosure of the data or the information obtained from the facilities. Upon request by DOE, such an agreement shall also be signed by contractor personnel.

*and substituted with:*

- (d) This section shall flow down to all sub-contracts.

**H.2 – H.8**

*No significant changes.*

**H.9 ADDITIONAL DELIVERY ORDER CLAUSES FOR WORK ON DEPARTMENT OF ENERGY (DOE) FACILITIES HAVING CLASSIFIED INFORMATION**

*The following was deleted from list of security clauses that may apply to projects at DOE facilities having classified information :*

“and DEAR 952.204-70 Classification/Declassification (SEP 1997)”

**H.10 USE OF NON-FEDERAL PERSONNEL IN EVALUTIONS**

*No significant change.*

**H.11 FLOWDOWN OF SAFETY AND HEALTH CLAUSE (JAN 1993)**

*“The clauses at DEAR 952.223-71...” was changed to: “The clauses at DEAR 952.223-17...”*

**H.12 – H.13**

*No significant changes.*

**H.14 LIQUIDATED DAMAGES**

*Simplified text; no change in meaning.*

**H.15 TITLE TO AND RESPONSIBILITY FOR CONTRACTOR-INSTALLED EQUIPMENT**

*Language simplified and limited to subject title, as follows:*

Title to all equipment installed by the Contractor shall be vested in the Government after Acceptance by the Government, and shall not relieve the Contractor's responsibility for ECM performance. Title may be vested in the Contractor as determined by the Contracting Officer. Consideration that should be taken into account by the Contracting Officer in vesting title in the Contractor should include use of financial incentives by the Contractor for the project such as production tax credits and/or other incentives.

## **H.16 REQUIRED INSURANCE**

*Required proof of insurance changed from "certificate or written statement of the required insurance coverage" to "a copy of the insurance policy endorsement."*

## **H.17 – H.18**

*Some rewording/rewriting; no substantive changes.*

## **H.19 ADDITIONAL OR DIFFERENCE CLAUSES AND PROVISIONS FOR DELIVERY ORDERS AND DELIVERY ORDER REQUEST FOR PROPOSAL**

*Old H.19 said: "...agency-specific requirements as documented in the agency solicitation (DO RFP) shall be understood to either override or supplement the contract requirements, as indicated in the DO RFP, and as permitted by the language at Section C.1 of this contract."*

*The new H.19 states:*

*"Solicitations for a specific Delivery Order (DO RFP) may contain additional clauses and provisions that are site specific to the agency's requirements. Should there be a conflict between the terms and condition provisions in the Delivery Order and the IDIQ Contract, the Contractor shall notify the Agency Contracting Officer for resolution."*

## **H.20 PROCEDURES FOR AWARDING DELIVERY ORDERS**

*Reorganized; no substantive change.*

## **H.21 REQUIREMENTS FOR INITIAL PROPOSAL CONTENTS FOR DELIVERY ORDER ECM PROJECTS**

*In requirements for the "Management Approach" section of the initial proposal, the required narrative for organization and approach for Operations, Maintenance, Repair and Replacement section is deleted. Requirement for Risk & Responsibility Matrix remains. In the revised matrix (Attachment 5), preventive maintenance is now a separate item from equipment repair and replacement. (See also H.24.)*

*Descriptions of DO Schedules are deleted from this section and now appear in Attachment 8. Direct and indirect expenses are to be shown on the DO Schedules in the price proposal in accordance with the pricing placement guidance in Attachment 8.*

## H.22 REVIEW OF INITIAL PROPOSALS FOR DELIVERY ORDER ECM PROJECTS

*This text replaces more detailed instructions on review of initial proposals:*

- (a) Contractor-Identified Project: The Government will review the Initial Proposal submitted by the Contractor and make a determination as to whether the Contractor-Identified project is a project that the Government wants to pursue further. If the Government determines to pursue the Contractor-Identified Project, a NOI and a DO RFP will be issued to the Contractor. The NOI will request a Detailed Energy Survey and a Final Proposal in accordance with the requirements of the DO RFP and the proposal contents included in **Sections. H.23 and H.24** of the Contract.
- (b) Government-Identified Project: Should the Government determine to pursue a Government-Identified Project, a DO RFP with a technical data package and/or site description will be issued by the Government. The Government-Identified Projects will be competed among eligible Contractors and evaluated in accordance with the evaluation factors identified in the specific DO RFP. The selected Contractor for award will be notified by the Agency Contracting Officer with the issuance a NOI and request for a Final Proposal with specific instructions.

## H.23 DETAILED ENERGY SURVEY

*Revised and reorganized; no substantive changes.*

## H.24 REQUIREMENTS FOR FINAL PROPOSAL CONTENTS FOR DELIVERY ORDER ECM PROJECTS

*The final proposal is recast as two volumes: Volume I – Technical Proposal; and Volume II – Price Proposal. In required content, utility rebates or system benefit fund incentives are added to ECM descriptions; the requirement for description of estimated savings in the Technical Proposal is deleted (savings are detailed on the Schedule DO-4).*

*H.24 is shortened from about 6 pages to 2. Descriptions of DO Schedules are deleted from this section and now appear in Attachment 8, along with pricing placement guidance, which dictates where on the schedules direct and indirect expenses are to be shown. (H.24.2 should have referred to this guidance, as H.21 does, but does not.)*

*Required content for the M&V Plan is now in Attachment 7, which includes summarizes and references baseline energy data and calculation methods and assumptions to determine estimated/guaranteed savings.*

*Under content requirements for “Management Approach,” requested information on O&M, Repair & Replacement is expanded. In the revised Risk & Responsibility Matrix (Attachment 5), operations, preventive maintenance, and equipment repair and replacement are now separate items.*

## **H.25 FINAL PROPOSAL EVALUATION AND AWARD FACTORS**

*This paragraph replaces a longer one that included discussion of technical and price factors, best value vs. lowest price, and preaward requirements:*

Final proposals will be evaluated and selected in accordance with the criteria set forth the in the DO RFP. The Government shall not be responsible for any costs incurred, such as proposal preparation costs or the costs incurred in conducting the DES unless authorized by the Agency Contracting Officer.

## **H.26 PREAWARD REQUIREMENTS**

*Unneeded verbiage was deleted. No substantive change.*

## **H.27 REQUIREMENTS FOR COMPETITIVE FINANCING ACQUISITION**

*H.27 is NEW:*

### **H.27.1 Investor Deal Summary**

The Contractor shall submit the IDS (**Attachment 9**), along with the Contractor's Point of Contact, electronically in Microsoft Word format, to the Agency Contracting Officer, DOE CO and COR after completion of the DES.

### **H27.2 Competitive Financing Offers Based on Investor Deal Summary And Standard Financing Offers**

- (a) The Contractor shall solicit and select financing offers from the commercial market place through a competitive selection process. This process must incorporate the final IDS and require the financing offers to be in the form of the Standard Financing Offer (SFO) as set out in **Attachment 10** to this Contract. Once this process is completed and a selection is made, the Contractor shall prepare a Selection Memorandum describing the selection process including the number of offers solicited and received, the rationale for selecting the financier, and the reasons why the selection is the best value for the project. This process may be subjected to audit by the government.
- (b) The Contractor shall certify to the Government that the contents of the Selection Memorandum are true and correct and in accord with best business practice.
- (c) The Contractor shall submit the IDS, SFO, Selection Memorandum and certification with its Price Proposal in the Final Proposal (**H.24.2 (d)**).



## **SECTION I — CONTRACT CLAUSES**

FAR 52.252.2 CLAUSES INCORPORATED BY REFERENCE (JUN 1988)

**The following clauses are applicable to the construction phase(s) of the Contract and Delivery Orders.**

*THESE CLAUSES ARE NEW:*

52.225-9 Buy American Act — Construction Materials (May 2002)

52.225-11 Buy American Act — Construction Material Under Trade Agreements

## **PART III — LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS**

### **SECTION J — LIST OF ATTACHMENTS**

*These attachments are revised or new:*

Attachment 1 — Definitions of Terms Applicable to This Contract (revised to add or amend definitions)

Attachment 2 — Schedules of Submittals for Delivery Orders (revised)

Attachment 3 — Negotiated Contract B-1 Schedule (revised for 2 new Technology Categories)

Attachment 4 — Revised Schedules DO-2 And DO-4 (revised)

Attachment 5 — Risk/Responsibility Matrix (revised for clarity and separate Maintenance from Repair and Replacement responsibilities)

Attachment 7 — M&V Plan and Reporting Outlines (new)

Attachment 8 — Description of Delivery Order (DO) Schedules and Placement of Pricing Information (new)

Attachment 9 — Investor Deal Summary Template (new)

Attachment 10 — Standard Finance Offer Template (new)

